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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 GABRIEL ALLEN ECKARD,

9 Plaintiff,

10 v.

11 PATRICIA THOMAS, et al.,

12 Defendants.

CASE NO. C19-104 RSM

ORDER ADOPTING REPORT AND  
RECOMMENDATION

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14 This matter is before the Court on United States Magistrate Judge Brian A. Tsuchida's  
15 Report and Recommendation ("R&R") for the Court to grant Defendants' motion for summary  
16 judgment. Dkt. #32. Plaintiff has filed objections, to which Defendants responded. Dkts. #41  
17 and #42. Having reviewed the record de novo, the Court adopts the R&R.

18 Plaintiff, then held in a county jail, initiated this action based on interactions with jail  
19 staff that culminated in Defendants' use of oleoresin capsicum vapor and a restraint chair on  
20 Plaintiff. Dkt. #5. Plaintiff contended that these actions violated his Fourth and Fourteenth  
21 Amendment rights. *Id.* at ¶ 20. Judge Tsuchida's R&R thoroughly explained why those claims  
22 fail. Dkt. #32 at 11–16. Plaintiff objects and argues that the R&R is incorrect as to his chair  
23 restraint claims. Because Plaintiff's objections now only focus on his placement in a restraint  
24 chair, the Court primarily addresses that aspect of the R&R.

1 The R&R recounted Plaintiff's constitutional right, as a pretrial detainee, to be free from  
2 punishment. This looks to "whether there was an express intent to punish, or 'whether an  
3 alternative purpose which [the restriction] may rationally be connected is assignable for it, and  
4 whether it appears excessive in relation to the alternative purposes assigned [to it].'" Dkt. #32 at  
5 5 (citing *Demery v. Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004) (citation omitted)) (alterations  
6 in R&R). At bottom, the consideration is whether Defendants' actions were objectively  
7 unreasonable. *Id.* (citing *Kingsley v. Hendrickson*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2466, 2475, 192  
8 L.Ed. 2d 416 (2015)).

9 The R&R recounts much of the evidence, including evidence demonstrating that Plaintiff  
10 was warned ahead of time that his continued pressing of the emergency call button in his cell was  
11 interfering with operation of the jail and needed to stop. Dkt. #32 at 7–8 (citing Dkt. #17). When  
12 Plaintiff continued to press the emergency button in his cell and interfere with jail operations,  
13 Defendants found it necessary to place him in a restraint chair. *Id.* at 8 (citing Dkt. #17). Because  
14 the restraint chair would make Plaintiff unable to push his emergency button in the event of a  
15 true emergency, Defendants determined that it was necessary to place Plaintiff in the observation  
16 unit of the jail. *Id.*

17 Judge Tsuchida's R&R then goes on to correctly consider the evidence in the light most  
18 favorable to Plaintiff and concluded that Defendants established that Plaintiff's actions were  
19 interfering with administration of the jail. Plaintiff's conclusory arguments to the contrary are  
20 purely speculative. Properly considering the evidence before the Court and applying the relevant  
21 law, the R&R concluded that Defendants' actions were objectively reasonable and did not  
22 amount to unconstitutional punishment. *Id.* at 15–16 (considering *Kingsley* factors).

23 Plaintiff's objections primarily rehash his speculative factual arguments that were  
24 appropriately rejected in the R&R. For instance, Plaintiff claims that Judge Tsuchida had no

1 basis to conclude that pressing the emergency call button would interfere with jail administration.  
2 Dkt. #41 at 1–3. Similarly, Plaintiff argues that other more reasonable options were available to  
3 Defendants in addressing his conduct. *Id.* at 3–4. Plaintiff maintains that the R&R failed to  
4 consider this “evidence” and simply ignored his testimony because he is a prisoner. *Id.* at 3–5.  
5 But the Court’s de novo review makes clear that Plaintiff’s “evidence” is overly speculative as  
6 he does not establish any basis for his knowledge of jail operations. Conversely, Defendants  
7 have presented declarations detailing the events and their actions. Dkts. #16 and #17. Plaintiff  
8 may not rely on his own speculation. *See Nelson v. Pima Cmty. Coll.*, 83 F.3d 1075, 1081–82  
9 (9th Cir. 1996) (“[M]ere allegation and speculation do not create a factual dispute for purposes  
10 of summary judgment.”).

11 Lastly, Plaintiff again complains that he should be allowed additional time to conduct  
12 discovery. Dkt. #41 at 5. But the R&R fully considered this issue. Most importantly, Judge  
13 Tsuchida noted that the discovery deadline had long since passed and that Plaintiff had not  
14 identified any potential evidence likely to alter the Court’s consideration. Dkt. #32 at 10.  
15 Similarly, Defendants’ response to Plaintiff’s objections affirms that “[t]he discovery cutoff  
16 passed without any discovery requests from Plaintiff and, to this date, Defendants have never  
17 received discovery requests of any kind from Plaintiff in this matter.” Dkt. #43 at ¶ 2. The Court  
18 finds it appropriate to deny Plaintiff’s request, as recommended by the R&R.

19 Accordingly, and having reviewed Defendants’ Motion for Summary Judgment, the  
20 Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida, the  
21 objections and responses thereto, and the remaining record, the Court FINDS and ORDERS:

- 22 1. The Report and Recommendation (Dkt. #32) is ADOPTED.
- 23 2. Defendants’ Motion for Summary Judgment (Dkt. #22) is GRANTED and the complaint  
24 is dismissed with prejudice.

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Dated this 9 day of March, 2020.

RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE